

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

MACUHEALTH, LP
a Michigan Limited Partnership,

Plaintiff,

Case No. _____

v.

Jury Trial Demanded

HYPERION, LLC
a Virginia Limited Liability Company,

Defendant

COMPLAINT

MacuHealth, LP (“MacuHealth”) brings this complaint against Hyperion, LLC (“Hyperion”) for violations of 15 U.S.C. §1125(a) (Section 43(a) of the Lanham Act), the unfair competition common laws of the State of Michigan, and the Michigan Consumer Protection Act due to false and misleading representations of facts and characteristics of its Eye Vitality Plus product to customers for whom both MacuHealth and Hyperion compete. As the bases for its Complaint, MacuHealth states as follows:

THE PARTIES

1. Plaintiff MacuHealth, LP (“MacuHealth”) is a Michigan Limited Partnership having a principal place of business at 280 N. Old Woodward Avenue, Suite 107, Birmingham, MI 48009.

2. On information and belief, Defendant Hyperion, L.L.C. (“Hyperion”) is a Virginia corporation and has a principal place of business at 261 Reid Rd., P.O. Box 593, Lexington, VA 24450.

JURISDICTION AND VENUE

3. This action arises under the laws of the United States, Title 15 of the United States Code, 15 U.S.C. § 1125(a) and the common law of unfair competition in the state of Michigan and the Michigan Consumer Protection Act, MCL 445.903.

4. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§ 1331, 1332(a) and 1338(b). This Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. §1367(a).

5. This Court has personal jurisdiction over Hyperion because Hyperion has transacted business in Michigan by among other things marketing, distributing, providing, offering for sale, and/or selling products, including a nutritional

supplement eyes called Eye Vitality Plus, in the United States and in Michigan, including in this judicial district, such as through the website <https://greenvalleynaturalsolutions.com>. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d).

GENERAL FACTUAL BACKGROUND

6. MacuHealth was established in 2006 and operates a facility at its headquarters in Birmingham, Michigan.

7. MacuHealth manufactures, sells and distributes a dietary supplement for the treatment and prevention of macular degeneration, which MacuHealth sells under the trademarks MacuHealth with LMZ³ and MacuHealth with LMZ³ Plus.

8. MacuHealth with LMZ³ and MacuHealth with LMZ³ Plus include the active ingredients Lutein, Meso-zeaxanthin, and Zeaxanthin.

9. MacuHealth sells and distributes MacuHealth with LMZ³ and MacuHealth with LMZ³ Plus throughout the United States, as well as various other countries in the World.

10. Hyperion also markets, sells and distributes a dietary supplement for the treatment of eye health and/or macular degeneration, which Hyperion sells under the trademark Eye Vitality Plus.

11. Each Eye Vitality Plus capsule purportedly includes the active ingredients Lutein, Meso-zeaxanthin, and Zeaxanthin.

12. Hyperion has advertised, sold, and shipped Eye Vitality Plus to consumers located in Michigan, including in this judicial district.

COUNT I

UNFAIR COMPETITION UNDER 15 U.S.C. §1125(a)(1)(B)

(Misrepresentation)

13. MacuHealth incorporates and reasserts each of the preceding paragraphs herein.

14. Hyperion sells bottles of Eye Vitality Plus, each bottle containing 60 capsules.

15. A representative bottle of Eye Vitality Plus is shown below:



16. A bottle of Eye Vitality Plus includes a label adhered thereto, and the label includes a table of “Supplement Facts,” as set forth below:

Supplement Facts		
Serving Size 1 Capsule		
Servings Per Container 60		
Amount Per Serving % DV		
Lutein Extract 5%	300 mg	*
Meso-Zeaxanthin 5%	200 mg	*
Zeaxanthin 5%	40 mg	*
Other Ingredients: Gelatin (Capsule), Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide		
* Daily Value not established		

17. Hyperion owns and operates a website at <http://greenvalleynaturalsolutions.com> (“Hyperion’s Website”). Exhibit 1.
18. Hyperion advertises the Eye Vitality Plus dietary supplement on Hyperion's Website. Exhibit 2.
19. An excerpt of Hyperion’s advertisement of the active ingredients of Eye Vitality Plus is set forth below:

**In Each and Every Capsule
of Eye Vitality Plus™...**

You get clinically-proven amounts of
the three carotenoids you need for
optimal eye health:

- ▶ 15 mg Lutein
- ▶ 10 mg Meso-Zeaxanthin
- ▶ 2 mg Zeaxanthin

Replace the nutrients you're losing
to aging – and restore the “inner eye
shield” that protects and preserves
your sight. Click here to order
Eye Vitality Plus™ now...

**Click here to order
Eye Vitality Plus™
now...**



20. Hyperion’s Website states that Eye Vitality Plus includes the following ingredients in the stated amounts in each capsule:

- 15 mg Lutein
- 10 mg Meso-zeaxanthin
- 2 mg Zeaxanthin

Id.

21. Eye Vitality Plus capsules do not include 15mg of Lutein.

22. Eye Vitality Plus capsules do not include 10mg of Meso-zeaxanthin.

23. Eye Vitality Plus capsules do not include 2mg of Zeaxanthin.

24. In January 2017, the Nutrition Research Centre Ireland (“NRCI”) conducted an analysis of 3 separate Eye Vitality Plus capsules taken from manufacturing Lot No. 13577, and NRCI issued a report (the “NRCI Report”). Exhibit 3.

25. The bottle containing the Eye Vitality Plus capsules analyzed by NRCI stated an expiration date of August 2019. *Id.*, p. 2

26. The NRCI Report indicates that the Eye Vitality Plus capsules have an average of 4.35 +/- 0.42 mg of Lutein per capsule. *Id.*

27. The NRCI Report indicates that the Eye Vitality Plus capsules have an average of 8.32 +/- 0.59 mg of Meso-zeaxanthin per capsule. *Id.*

28. The NRCI Report indicates that the Eye Vitality Plus capsules have an average of 1.46 +/- 0.06 mg of Zeaxanthin per capsule. *Id.*

29. Hyperion's representations on Hyperion's Website and on the Eye Vitality Plus bottles that Eye Vitality Plus capsules each includes 15 mg of Lutein are false and misleading and thereby constitute a misrepresentation of the nature, characteristics and/or qualities of Eye Vitality Plus.

30. Hyperion's representations on Hyperion's Website and on the Eye Vitality Plus bottles that Eye Vitality Plus capsules each includes 10 mg of Meso-zeaxanthin are false and misleading and thereby constitute a misrepresentation of the nature, characteristics and/or qualities of Eye Vitality Plus.

31. Hyperion's representations on Hyperion's Website and on the Eye Vitality Plus bottles that Eye Vitality Plus capsules each includes 2 mg of Zeaxanthin are false and misleading and thereby constitute a misrepresentation of the nature, characteristics and/or qualities of Eye Vitality Plus.

32. MacuHealth has been and continues to be damaged by Hyperion's misrepresentations as described above.

33. Hyperion's misrepresentations constitute a violation of 15 U.S.C. §1125(a)(1)(B).

34. Hyperion's violations of 15 U.S.C. §1125(a)(1)(B) have been willful and intentional.

COUNT II

MICHIGAN COMMON LAW UNFAIR COMPETITION

35. MacuHealth incorporates and reasserts each of the preceding paragraphs herein.

36. Hyperion's misrepresentations of fact as to the ingredients of Eye Vitality Plus constitute unfair competition under the common law of the State of Michigan.

COUNT III

MICHIGAN CONSUMER PROTECTION ACT – MCL 445.903(1)

37. MacuHealth incorporates and reasserts each of the preceding paragraphs herein.

38. Hyperion has represented and continues to represent that Eye Vitality Plus includes 15 mg of Lutein, 10 mg of Meso-zeaxanthin and 2mg of Zeaxanthin, when, in fact, such representations is false.

39. Hyperion's misrepresentations with respect to the ingredients of Eye Vitality Plus constitute violations of MCL 445.903(1)(c) and (e).

40. Hyperion's violations of MCL 445.903(1) have been willful and intentional.

41. MacuHealth is entitled to its reasonable attorneys' fees pursuant to MCL 445.911 as a result of Hyperion's violation of the Michigan Consumer Protection Act.

PRAYER FOR RELIEF

WHEREFORE, MacuHealth prays for relief as follows:

A. For a judgment determining that Hyperion is liable to MacuHealth for federal unfair competition in violation of 15 U.S.C. § 1125(a)(1)(B);

B. For a judgment determining that Hyperion is liable to MacuHealth for unfair competition under the common law of the State of Michigan;

C. For a judgment determining that Hyperion is liable to MacuHealth for violation of the Michigan Consumer Protection Act, MCL 445.903(1).

D. For a judgment declaring that Hyperion's unfair competition under 15 U.S.C. §1125(a), the common laws of the State of Michigan and under MCL 445.903(1) has been willful and deliberate;

E. For a judgment awarding MacuHealth: (1) Hyperion's profits; (2) damages sustained by MacuHealth; and (3) the cost of this action;

F. For a judgment awarding MacuHealth treble Hyperion's profits due to Hyperion's willful and deliberate unfair competition;

G. For judgment declaring that this case is exceptional per 15 U.S.C. § 1117(a);

H. For a judgment awarding MacuHealth its attorneys' fees;

I. For a judgment awarding MacuHealth punitive damages as authorized by law;

J. For an order preliminarily and permanently enjoining and restraining Hyperion and its officers, directors, employees, agents and servants, and all those in active concert of participation with any of them, from directly or indirectly stating, indicating or implying that its Eye Vitality Plus product includes inaccurate statements with respect to the quantities of Lutein, Meso-zeaxanthin and/or Zeaxantin; and

K. For such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

MacuHealth hereby demands a trial by jury in this action.

Dated: March 22, 2017

Respectfully submitted,

By: /s/Glenn E. Forbis
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